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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/808,813 | 03/25/2004 | Mark L. Adams | 82076 | 6592 |
| 23685 7590 07/06/2009 KRIEGSMAN & KRIEGSMAN 30 TURNPIKE ROAD, SUITE 9 SOUTHBOROUGH, MA 01772 | | | | |
| EXAMINER | | | | |
| BOUCHELLE, LAURA A | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3763 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/808,813

Applicant(s)

ADAMS, MARK L.

Examiner

LAURA A. BOUCHELLE

Art Unit

3763

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 and 35-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-7, 14, 23-29, 32, 33, 35-40 and 44 is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-13, 15, 19-22, 30, 31 and 41-43 is/are rejected.
- 7) ☒ Claim(s) 16-18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-849)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-3, 8-12, 15, 19-22, 30, 31, 41-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Rogers et al (US 6416496). Rogers discloses a delivery apparatus comprising a tube (tube exit), a device for monitoring the administration of fluids, a casing 150, an electronic circuit mounted within the casing, and a metering device (col. 13-14). The device includes a timer (Col. 14, lines 38-30). The casing comprises a lower housing and an upper housing pivotally connected by a hinge (col. 13, lines 22-23). The device includes an externally visible display 178 with an input 194 (Col. 14, lines 5-10).
3. Rogers does not disclose that the device is specifically for the administration of enteral nutrition. Since the instant claim is drawn to an apparatus and not a method, the limitation regarding the use of the device with a feeding tube is interpreted to be an intended use recitation. Enteral feeding tube is interpreted to mean a tube used to deliver fluid through an enteral route of administration which may include orally, through a nasogastric feeding tube, or rectally, for example. Therefore, the tube of Rogers is capable of delivering any type of fluid to a patient orally or through the nose and into the stomach. Applicant has failed to positively recite any structural features that would differentiate the claimed invention from any type of delivery tube that could be used to deliver fluids orally.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 13, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers. Claims 13, 35 differ from Rogers in calling for the tube connector to be an outwardly projecting barb. Rogers is silent as to the tube connector. However, it is well known in the art to use a barbed connector to connect a tube to an upstream device because it is secure and releasable. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Rogers to include a barbed tube connector.

Allowable Subject Matter

6. Claims 4-7, 14, 23-29, 32, 33, 35-40, 44 are allowed.
7. Claims 16-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
- 8.

Response to Arguments

9. Applicant's arguments filed 3/6/09 have been fully considered but they are not persuasive. Applicant argues that the recitation of an enteral feeding tube for monitoring the administration of enteral nutrition fluids is not taught by Rogers. The examiner still believes that this is an intended use limitation for the reasons stated above, namely that the deliver of enteral nutrition may be achieved orally and therefore an enteral feeding tube does not require any additional structural features that are not disclosed by Rogers. An intravenous tube as disclosed

by Rogers is nothing more than a thin tubular member capable of delivering any type of fluid and may be identical in structure to a nasogastric tube. The device of Rogers is capable of monitoring the delivery of whatever fluid is contained in the reservoir, whether it is a drug to be infused or an enteral nutrition fluid. The type of fluid does not have an effect on the functioning of the device.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA A. BOUCHELLE whose telephone number is (571)272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle
Examiner
Art Unit 3763

/Laura A Bouchelle/
Examiner, Art Unit 3763

/Nicholas D Lucchesi/
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